

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D28288
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PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2010-03673

DECISION, ORDER & JUDGMENT

In the Matter of Terrell Mitchell, petitioner, v
Robert Kohm, etc., et al., respondents.

Terrell Mitchell, E. Elmhurst, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael Siudzinski of
counsel), for respondent Robert Kohm.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent, Robert Kohm, Justice of the Supreme Court, Queens County, to entertain and decide a motion made by the petitioner, a criminal defendant in an action entitled *People v Mitchell*, pending in Supreme Court, Queens County, under Indictment No. 580/08. Application by the petitioner to prosecute this proceeding as a poor person.

ORDERED that the application to prosecute this proceeding as a poor person is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied as academic; and it is further,

ADJUDGED that the petition is denied and the proceeding is dismissed on the merits, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to

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demonstrate a clear legal right to the relief sought.

SKELOS, J.P., LEVENTHAL, CHAMBERS and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court